

Dexter Community Schools  
Board of Education  
Executive Summary for Discussion

**Purpose:** To authorize the Superintendent or CFO to execute two Memorandums of Understanding and a Border to Border Trail Easement between DCS and the City of Dexter.

**Explanation:** Attached is a proposed easement between DCS and the City of Dexter along with two Memorandums of Understanding. As negotiations continue and the City of Dexter has a timeline approaching, we are continuing to revise the easement and MOU's based on negotiations with the City. It is the recommendation that the easement not be executed until the two Memorandums of Understanding (MOU) associated with the easement are first executed.

The first MOU relates to our future working relationship terms regarding DCS and the City of Dexter. Specifically, both Dexter Community Schools and the City of Dexter are both governmental entities and divisions of the State of Michigan. DCS is a Michigan general powers school district and the City of Dexter is a Michigan home rule city. As a result, DCS and the City of Dexter have overlapping geographies and respective governmental responsibilities. Both entities bear a fiduciary duty to their stakeholders. In recent years, DCS has been treated differently in projects and we need to have an agreement regarding our working relationship moving forward.

**Recommendation (proposed resolution):**

It is the recommendation of the Superintendent that the Dexter Community Schools Board of Education authorize the Superintendent or CFO to execute and deliver the Border to Border Trail Easement, the Memorandum of Understanding regarding the future working relationship between DCS and the City of Dexter and the Memorandum of Understanding regarding the Border to Border Easement substantially in the form as presented to the Board subject to such modifications as may be reasonably agreed to by the Administration in exchange for a payment of \$17,900. The granting of the Easement is subject to the execution of the Memorandum of Understanding regarding the future working relationship between DCS and the City of Dexter and the Memorandum of Understanding regarding the Border to Border Easement.

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “MOU”) is made and entered into this 10th day of June, 2019 by and between Dexter Community Schools, a Michigan general powers school district whose address is 7714 Ann Arbor Street, Dexter, MI 48130 ( the “District”), and the City of Dexter, a municipal corporation whose address is 8140 Main Street, Dexter, MI 48130 (the “City”);

WHEREAS, the City has initiated effort to construct a Non-Motorized Pathway within the geographic area of the City (the “Non-Motorized Pathway”) for use by residents of the city;

WHEREAS, the City has approached the District and has requested that the District grant the City a Non-Motorized Pathway access easement over, through and on certain property owned by the District (the “Requested Easement”);

WHEREAS, the District and the City have initiated discussions concerning the Requested Easement but not yet reached agreement on the design, location and/or the economic consideration to be paid by the City to the District for and in consideration of the grant of the Requested Easement;

WHEREAS, the parties wish to execute this MOU to evidence their intent to work towards the finalization of all elements of a transaction pursuant to which the District would grant to the City the Requested Easement across the District’s property.

NOW THEREFORE the parties hereto agree as follows:

1. Recitals. The recitals are acknowledged to be true, correct and complete and otherwise incorporated herein by reference.

2. Non-binding. This MOU shall not be binding (except for Sections 5 and 6 of this agreement) upon either party but shall set forth the parameters by which the City and the District will attempt to reach agreement on all of the terms and conditions associated with the granting of the Requested Easement. In the event the parties fail to reach an agreement with respect to all terms and conditions associated with the Requested Easement by June 20, 2019, or such later date as they may agree in writing, then this MOU shall automatically terminate without liability to either party it being agreed that the parties shall have the right to extend the time period at their discretion subject to the execution of a mutually acceptable modification.

3. Template of Easement Agreement. The parties have negotiated a template of an easement agreement (the “Form”), a copy of which is attached hereto and incorporated herein by reference. Each party agrees that it is generally satisfied with the Form subject to the agreement of the parties on the plans, the legal description pricing for the consideration to be paid for the granting of the easement. Each party shall have the right to require modifications to the Form as a condition of its election to grant and/or accept same.

4. Plans. Within 10 days of the date hereof the City shall develop and deliver to the District plans for the improvements contemplated to be installed by the City within the

Requested Easement and a legal description for the proposed easement for the review and comment of the District. The parties shall exert commercially reasonable efforts to negotiate and agree upon a set of final plans for the Easement Improvements and the location of same within sixty (60) days of such submission. Once the parties have reached a tentative agreement as to the location of the easement the parties shall proceed with the appraisal mechanism set forth in paragraph 5. If the parties are unable to reach agreement on the plans and specifications for the pedestrian easement improvements within said sixty (60) day period for any reason or in the event the parties are unable to reach an agreement on the economic consideration to be paid by the City to the District for the easement and/or the plan specifications therefor by the date stated in Section 5 then this agreement shall automatically terminate and each party shall be released of any and all future obligations arising hereunder except to the extent that a party is expressly obligated to pay for half of the costs incurred in obtaining the appraisal of the property and the City shall bear attorney fees and associated other costs with the creation of the easement (Section 6). [Landscaping for screening will be mutually agreed upon prior to the start of installation of the pathway.](#)

5. Appraisal. The parties agree to engage a third party MAI certified appraiser to perform a valuation of the fair market value of land to be encumbered by the easement and the fair market consideration to be paid to the District in exchange for granting the Requested Easement. The cost for such appraisal shall be equally split between the City and the District. The determination of the fair value market consideration for the Requested Easement established by such appraiser shall be the basis for the parties to continue negotiating the price of such easement but such valuation shall not be binding upon the parties. The cost of the appraisal shall be initially paid by the District and the City shall reimburse the District for half of all such appraisal costs within thirty (30) days of the presentation of a paid receipt therefor it being agreed that allocation of the cost of the appraisal as set forth in this Section 5 shall be binding of the parties. In the event the City and the District have not agreed upon the consideration to be paid to the District for the Requested Easement by June 20, 2019, then this MOU shall automatically terminate as provided in the last sentence of Section 4.

6. Attorney Fees. The City agrees to reimburse the District for the attorney fees and costs associated with the Non-Motorized Pathway Access Easement MOU and Agreement.

7. Final Approval. When and if the administrative staff for each of the District and the City have reached agreement on all terms of the Requested Easement, each shall submit same to the City Council and the Board of Education, as the case may be, for approval. Until and unless each of the City Council and the Board of Education approve the easement and it is thereafter signed, neither party shall be bound to the terms of the easement.

8. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature on each counterpart were on the same instrument. An executed counterpart of this Agreement may be delivered by facsimile or pdf attachment and or shall be deemed an original for all purposes hereunder.

9. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan, without giving effect to principals of conflicts of law.

10. Notices. Notices shall be deemed as given hereunder upon personal delivery to the address set forth below, by registered or certified mail, postage prepaid to such address or by a nationally recognized overnight delivery service. Notices shall be addressed:

If to City:

City of Dexter  
8140 Main Street  
Dexter, MI 48130

If to District:

Dexter Community Schools  
7714 Ann Arbor Street  
Dexter, MI 48130

IN WITNESS WHEREOF, the undersigned have caused their signatures to be placed on the day and year first above written.

DISTRICT

DEXTER COMMUNITY SCHOOLS, a  
Michigan general powers school district

By: \_\_\_\_\_

CITY

CITY OF DEXTER, a municipal  
corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

# MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (**MOU**) is agreed to as of June \_\_\_\_, 2019, between the **Dexter Community Schools**, a Michigan general powers school district (the “**District**”), and the **City of Dexter**, a Michigan home rule city (the “**City**”).

WHEREAS, due to overlapping geographies and respective governmental responsibilities, the District and the City serve many of the same residents and taxpayers and other stakeholders; and

WHEREAS, the District and the City each bear a fiduciary duty to their stakeholders to collaborate and cooperate with each other to assure the efficient use of taxpayer dollars and other resources in fulfilling their various and respective governmental responsibilities; and

WHEREAS, the District and the City each aspire to have a positive, constructive working relationship with the other; and

WHEREAS, in the spirit of cooperation and the efficient and effective use of public resources, the District and the City wish to acknowledge and confirm their mutual understandings as to the relative authority and responsibilities of each with respect to the activities of the other, and to commit to a course of dealing to avoid increased cost and delays with respect to matters in which their interests and responsibilities intersect.

## 1. **General**

The parties acknowledge that:

(a) as a general powers school district, the District is neither a commercial nor an industrial enterprise, but is a governmental entity possessing powers expressly or by necessary implication conferred on school districts by state law and when performing its governmental functions is largely exempt from local requirements, including zoning requirements; and

(b) the City has regulatory authority over the District in connection with matters of ingress and egress, storm water drainage direct connection to the City’s storm water management systems to enable the City to comply with the terms of its Federal Discharge permit, and connection to the City’s water and sewer systems that the City will own, and has the opportunity to make non-binding comments on other aspects of site plans filed by or on behalf of the District with the State of Michigan (**State**).

## 2. **School District Site Plans and Zoning**

Under existing law, with limited exceptions identified below, the State has exclusive jurisdiction over school district site plans for the development of school district sites and construction on those sites used for school purposes. The law granting exclusive jurisdiction over school site plans in the State also exempts school districts from most, but not all, local zoning restrictions. Exceptions to that exclusive jurisdiction and zoning exemption are:

- (i) construction of a new high school or expansion of an existing high school located in a township by 20% or more (excluding portables and other temporary structures);
- (ii) matters of ingress and egress to and from school district property from public roads;
- (iii) direct connection from school sites to a local government's storm water system;
- (iv) direct connections to a local government's water and sewer lines.

The City also has the opportunity to provide input to the State on the District site plans. While the State is not obligated to require changes to any site plan based on that input, as a matter of practice, the Michigan Department of Licensing and Regulatory Affairs (**LARA**) often defers to local authority comment, which makes timely input from the City important to the District. The District welcomes meaningful comment from the City on its site plans and collaborative efforts to address City concerns on matters for which the City exercises its regulatory authority.

The State's site plan review applies only to site elements which will be affected by proposed work. Roads, parking lots, athletic fields and related structures, earthworks which change the grading and playgrounds and related equipment which are proposed to be created or altered are all part of the site review. As part of its review LARA will consider local zoning set-back and height restrictions, and also considers visual and sound screening, traffic impacts and parking demand, which are each subjects for City comment.

#### *Subjects Requiring Local Approval*

Storm water drainage, site utilities, fire hydrant layout, fire department, and road (public way) accesses must also be approved by the State, county, or local governmental agency that has oversight responsibility for these improvements. This may include driveway access from City roads, utility easements, flood plain regulations, and buildings located near waterways. Water and sewer service are also matters of local control under the Public Health Code.

In regulating ingress and egress from the District's sites to public roads, the City's (and in some instances, the County's) authority is limited to the terms of access, including the location and connection of those drives to the public roads, and acceleration and deceleration turning lanes. The tie-in to the existing roadway shall be managed so as not to negatively impact drainage, and shall include the obligation repair to at least its prior condition any existing roadway where damage has been caused by the construction. Terms of access shall be based on a traffic study performed by a Professional Engineer and the work shall be completed in accordance with the City Engineering Standards. Because the District lacks authority to expend school district resources on property it does not own, the cost and installation of left turn lanes, stop signs and traffic controls are the responsibility of the governmental entity with jurisdiction and control over the road.

Because drainage is a matter of federal pollution control and storm water regulation and permitting, where storm water from the District's sites located within the City or subject to the 425 agreement with the City drains into the City's system, the City has the authority to regulate that discharge so that the City can comply with the requirements of its federal discharge permit.

The District shall comply with City standards governing access, drainage, and utility connections, but shall only be subject to City setback requirements which are necessarily and directly part of those standards, as opposed to those contained in City zoning requirements

The City retains authority to regulate commercial improvements (i.e. commercial activities

which benefit and are controlled by private entities even if they generate revenue for the school district) occurring on school property.

The other category of construction and remodeling activities where there can be an interplay between the State and local authorities arises in the construction itself. The State, as part of its site plan authority, also issues construction permits and has construction code and fire standard enforcement authority, including inspection. In some parts of the State, local code enforcement agencies with full time inspection staffs have reached agreement with a local district to enforce construction code compliance locally. Dexter is not one of those communities at this time. In the absence of that local agreement the responsibility for permits and inspections, including fire standards compliance, remains with the Bureau of Construction Codes and the Bureau of Fire Services or another third party which has been approved by the State to provide inspection services, in which case the State's role is limited to site plan approvals and issuing permits. The City retains inspection authority over subjects where it issues the permit or has approval authority as described in the paragraphs above under this subheading.

As of March 19, 2019, the Revised School Code also requires the District to consult with the City police department regarding school safety issues on the plans for the construction or major renovation of a school building or athletic facility before commencing the construction or renovation.

### **3. Water and Sewer Improvements and Connections**

The City and the District agree to adhere to the terms of past agreements relating to water and sewer improvements constructed for the benefit of the City (or the Village of Dexter) and the District, including, but not limited to the following:

- (a) Agreement dated February 26, 1952 relating to the construction of a sewer line;
- (b) Agreement dated November 14, 1963 relating to the construction of a sewer line;
- (c) Agreements dated October 20, 1987;
- (d) Sanitary Sewer Easement dated September 20, 1994;
- (e) Agreement dated June 14, 1999;
- (f) PA 425 Agreement dated April 10, 2000;
- (g) Easement Agreement dated February 3, 2009 relating to the installation, maintenance, repair and replacement of a well, pump house, water main and related appurtenances;
- (h) Agreement dated July 31, 2012.

The terms of these agreements and the recognized contributions of each party worked well and respected the limitations on the use of school district resources only for school purposes in the development and imposition of connection and use charges. The District also agrees to continue to pay charges to the City for utility access and services which are commensurate with and proportionate to the benefit it receives and considering the infrastructure the District has constructed and its status as a general powers school district and neither a commercial nor an industrial enterprise.

#### **4. Trash Collection and Recycling**

The District bids out contracts for trash collection and disposal, to achieve the lowest cost for the district. The District also avails itself of the County's free recycling services pursuant to the County's solid waste management plan.

The City has authority to provide for a garbage disposal system by ordinance and to set the rates for that system in compliance with the County's solid waste and recycling processing plan. The District understands that the City may impose licensing requirements for solid waste haulers operating within its boundaries, and the City understands that the District does not have to use a particular hauler as long as its hauler complies with the City's licensing requirements. The District intends to continue to seek competitive bids for its solid waste disposal.

#### **5. Public Safety**

As part of the original negotiation for the 425 Agreement for the High School property, the City and the District agreed that the cost of the school safety officer would be split 80% District/20% City. In April 2004 this Agreement was modified to say that the split would be 50% District/50% City.

As part of the negotiation for the 425 Agreement for the High School property the City and the District also agreed that the cost of the fire runs to Dexter High School would be paid for by the District. The cost for fire runs for all District facilities within the City boundary are paid for by the City

#### **6. City Design Review and Inspections**

The District and the City agree to work together cooperatively to minimize and avoid duplication of professional engineering services and inspections in order to:

- facilitate timely reviews and provision of comments on site plans to avoid costly delays,
  - The City commits to providing review letters within 2-3 weeks of receipt of the plans.
- be respectful of the relative authority of each,
- allow a level of engagement and communication which will assure the efficient and effective use of the public resources of each,
- recognize prior commitments on cost allocation agreed to by the parties, and
- avoid imposing costs on the District which exceed State standards and limitations on school districts
  - The District acknowledges the City's right to make non-binding suggestions on improvements to the site plan that exceed state requirements in the interest of having consistent development standards in the community. Comments on non-required site plan elements will be made by City staff and will not generate additional design review fees or cause delay. The City will clearly note on its comments that the District is not required to accept these suggestions.

Site utilities shall be installed per City approved drawings for City-owned and maintained utilities.

The District respects the authority of the City to inspect improvements over which it has regulatory authority and to charge reasonable fees for construction inspection services that bear a reasonable

relationship to the cost, including overhead. If the City chooses to engage in additional inspection or engineering services related to the items not described in Section 1(b), the City shall bear the cost. The District will provide copies of its inspection reports to the City upon request.

Inspection for storm sewer that connects to the City storm sewer system will be limited to the actual connection to the City system and areas where the storm system crosses water mains and/or sewer lines.

Prior to the start of the design of a construction project, representatives of the District (including a designated staff member of the District) and the City will meet to determine timelines for review, reach agreement on the design criteria to be used, and a course of communication and cooperation on that project which will achieve these goals efficiently and minimizing taxpayer expense, while allowing each to fulfill its responsibilities to the public. Each project will have a clearly defined District employee representative, in addition to a contractor/construction manager representative designated as the contacts for all review memos and invoices. This coordination shall include an agreement on the approach to and coordination of design criteria to be used, inspections of water and sewer main improvements and work completed in the public right of way to reduce duplication of inspections and related charges wherever feasible.

Agreed as of the date above written.

DEXTER COMMUNITY SCHOOLS

CITY OF DEXTER

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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AREA ABOVE LINE RESERVED FOR RECORDING DATA

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## NON-MOTORIZED PATHWAY ACCESS EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement"), made this \_\_\_ day of \_\_\_\_\_, 2019, is by and between DEXTER COMMUNITY SCHOOLS, a Michigan general powers school district, whose address is 7714 Ann Arbor Street, Dexter, Michigan 48130, together with its successors and assigns ("The District") and the CITY OF DEXTER, a Michigan municipal corporation, whose address is 8140 Main Street, Dexter, Michigan 48130 (together with its successors and assigns, "The City").

### Transfer Tax Exemptions

This instrument is exempt from the Michigan County Transfer Tax pursuant to the provisions of MCL 207.505(h) and from the Michigan State Transfer Tax pursuant to the provisions of MCL 207.526(i) because the value of the consideration given is less than One Hundred Dollars.

### RECITALS

A. The District is the owner of a parcel of land in the City of Dexter, County of Washtenaw, State of Michigan, consisting of \_\_\_\_\_ acres, more or less, whose legal description is attached as Exhibit A and incorporated by reference herein ("Property").

B. The District has agreed to grant to The City an appurtenant non-exclusive Easement for the purposes of Non-Motorized Pathway access and construction of a sidewalk over land more particularly described and depicted in Exhibit B of this Agreement (the "Easement Area").

### AGREEMENT

For and in consideration of \$ and the mutual covenants of this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follow:

1. The City Access Easement. The District hereby grants to The City as a burden on the Property, a non-exclusive easement for Non-Motorized Pathway ingress and egress over the Easement Area (the "Non-Motorized Pathway Easement" or "Easement"). This Non-Motorized Pathway Easement is subject to the prior rights of any utility company or third party contained in any easements recorded prior to the date hereof as well as any limitations contained herein. The

Non-Motorized Pathway Easement shall burden the Property described on Exhibit A and benefit the Property described on Exhibit A-1.

2. Appurtenant Easement. The Non-Motorized Pathway Easement is intended to run with title to the land for the use and benefit of The City and its guests and invitees, including members of the public as designated and permitted by the City, unless terminated as described in Section 8 below. This Agreement shall be binding on The District and The City and shall burden the Property unless terminated as provided in Section 8 below.

3. Rights Reserved by The District. The District retains all ownership rights in the Property other than the specific non-exclusive Easement rights that are expressly granted under this Agreement. The City shall not use or allow the use of the Non-Motorized Pathway Easement in any way that unreasonably interferes with the use of the Property by The District. The City reserves the right at any time to terminate this Non-Motorized Pathway Easement without liability by providing advance written notice of such election to terminate to The District at least thirty (30) days prior to the termination. Upon the termination of this Non-Motorized Pathway Easement and at the option of the District, the City shall, at its sole cost, remove all Easement Improvements and restore the Easement Area to as near as possible to the condition which existed prior to the date hereof or in a state reasonably acceptable to the District (“Removal and Restoration Work”). Such Removal and Restoration Work shall be accomplished within a commercially reasonable period of time.

4. Limitations. The Non-Motorized Pathway Easement may be used by The City and its guests and invitees, including members of the public as permitted and designated by The City. All uses of the Non-Motorized Pathway Easement by The City, its guests and invitees, shall comply with applicable law and shall not violate any prior restrictions or Easements of record. No person shall use or bring onto the Easement Area any motorized vehicles unless (a) otherwise agreed to in writing by The District, (b) required temporarily for the maintenance, repair or improvement of the Non-Motorized Pathway Easement by the City or The District, (c) required access by emergency vehicles, or (d) such use is required to comply with any law, rule or regulation relating to the accessibility of the disabled to public areas, including but not limited to, the Americans with Disabilities Act or any similar legislation. The City shall install, maintain and replace such signs near the Non-Motorized Pathway Easement disclosing such prohibited activities.

5. Initial Installation. The Non-Motorized Pathway Easement improvements (the “Easement Improvements”) to be installed by The City on, over and within the Easement Area shall comport with the plans and specifications therefor approved in advance and in writing by The District. The City shall not materially modify, amend or alter the plans for the Easement Improvements without the prior written consent of The District, which consent shall not be unreasonably conditioned, delayed, withheld, or denied. To the extent the initial plans for the Easement Improvements approved by the District do not include fencing which clearly marks and segregates the Easement Area from the rest of the Property, the District shall have the right to require the City to install, at the sole cost and expense of the City, such fencing as may be reasonably required by the District to mark and segregate the Easement Area, said election to be made in writing and delivered to the City within five (5) years of the date hereof and to include a drawing depicting the areas to be fenced. Any fencing required to be installed by the District pursuant to this Section 5 shall conform to fence design and specifications then used by the

District for other fencing and shall be completely installed within six (6) months of written notice to the City. In connection with the construction of the Easement Improvements The City shall also prepare, install, maintain, repair and replace in accordance with the terms of this Agreement “no trespassing” signs in the locations designated on the approved plans as well as additional signage to be placed near the parking lots located on The District’s Property as described in the plans approved by The District confirming that The District’s parking lots shall not be used for parking by users of the Non-Motorized Pathway Easement Area, as determined by The District. The District reserves the right to grant utility and other infrastructure improvement easements across and through the Easement Area which do not otherwise interfere with the easement rights granted herein, which other easement(s) shall include but not be limited to the right to place and install utilities and other infrastructures beneath the Easement Area. To the extent that any of the Easement Improvements are damaged due to the installation by The District or grantees (or their respective representatives, agents, or contractors) of such other easements, The District shall, or cause the installer thereof to, repair and restore the Easement Improvements to their prior condition. The Easement rights granted by The District to The City hereunder shall include the right to enter upon sufficient lands adjacent to the Easement Area for the purpose of installing, maintaining and/or repairing such Easement Improvements, it being agreed that all such access shall be scheduled in advance with the District so as to occur during such times as The District may reasonably require, but in no event shall such access of the Property unreasonably interfere with the operations of The District on its Property.

6. Right to Relocate. Upon one hundred twenty (120) days advance written notice to The City, The District shall, have the right to relocate all or any portion of the Easement Area and/or the Easement Improvements, onto another portion of the Property, to the extent The District’s use and occupancy of its Property reasonably requires same. Prior to effecting any alteration or relocation of the Easement Area or the Easement Improvements, The District shall provide to The City drawings reasonably depicting the area of relocation and this Agreement and its exhibits shall be modified as necessary to describe and depict the new Easement Area on the Property. All costs and expenses to relocate the Easement Area and the Easement Improvements shall be borne by The District.

7. Maintenance of Non-Motorized Pathway Easement. Except as otherwise set forth in this Agreement, The City shall be solely responsible for all maintenance, repairs and improvements (including cleaning, snow removal and grading) to areas of the Non-Motorized Pathway Easement and Easement Improvements deemed necessary for the use of the Non-Motorized Pathway Easement, at The City’s sole cost. The Non-Motorized Pathway Easement and Easement Improvements shall be maintained in a good and workmanlike condition by The City at all times. Notwithstanding the foregoing, no structures or other improvements shall be constructed by The City in the Non-Motorized Pathway Easement unless as set forth in this Agreement and/or approved in advance by The District in writing. Any maintenance, repairs and improvements shall be performed by The City in a manner consistent with applicable laws, codes and ordinances and so as not to unreasonably interfere with the use of the Property.

8. Termination. The District, including its successors and assigns, shall have the right to terminate the Non-Motorized Pathway Easement over the Easement Area in the event The City shall affirmatively adopt resolutions or otherwise affirmatively elect in writing to cease use of the Non-Motorized Pathway Easement for access purposes. Any election by The District to terminate this Non-Motorized Pathway Easement due to the adoption of such resolutions or other

affirmative written election as required hereunder, shall be effected by The District by delivering at least sixty (60) days advance written notice to The City of the intent to terminate this Non-Motorized Pathway Easement (“Termination Notice”). If The City fails to provide written notice to The District of its intent to continue the use of the Non-Motorized Pathway Easement within 60 days after receipt of the Termination Notice, then The District may terminate this Easement by recording an affidavit certifying that such Termination Notice was timely given and that The City failed to dispute said termination.

9. Insurance. Commencing on the date hereof until termination of the Non-Motorized Pathway Easement (if ever), The City shall procure and keep in effect general liability insurance satisfactory to The District pertaining to the use of the Easement Area in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate (with not less than \$2,000,000 additional excess/umbrella coverage) naming The District as additional insured, and provide a certificate and endorsements evidencing such coverage (and the policy if requested) to The District upon execution of this Agreement and thereafter upon request. The City and/or the insurance required to be maintained by the City shall be the primary source of defending, satisfying and resolving any claims arising from the installation, use and operation of the Easement granted hereby. The City shall reimburse the District for all amounts incurred by the District (including actual costs, and expenses) arising out of claims or liabilities related to the City’s exercise of its rights hereunder and the use of the Easement Area by the City and all persons claiming by and/or through the City. The foregoing sentence shall not relieve the District of its other financial obligations as set forth in this Agreement.

10. Defaults. If either party defaults in the faithful and punctual performance of any obligation to be performed by that party pursuant to this Agreement, then the other party, in addition to all other remedies it may have at law or in equity, may, but shall not be obligated to, perform such obligation on behalf of the defaulting party and be reimbursed by such defaulting party for the reasonable cost incurred, whether paid out of pocket or to existing employees or contractors at the reasonable hourly or other rate paid by such party. Except as to an obstruction preventing access to or use of the Easement Area, or except in a situation adjudged in good faith to be an emergency or involving material hazard to persons or property, the benefited party must, prior to curing the default of the other party and demanding reimbursement, first give to the defaulting party at least thirty (30) days advance written notice of default and allow such additional time as may be reasonably necessary to cure such default. In any case other than obstruction, emergency or material hazard to persons or property, thirty (30) days’ notice shall be deemed reasonable.

11. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Michigan.

12. Modifications. Any modification to this Agreement must be in writing, signed by the parties and recorded with the Washtenaw County Register of Deeds. Failure by a party to insist upon or enforce any of its rights shall not constitute a waiver thereof. Either party hereto may waive the benefit of any provision or condition for its benefit contained in this Agreement.

13. Recitals. The Recitals to this Agreement are incorporated herein by this reference.

14. Severability. The parties intend that a court shall endeavor to give effect to the provisions of this Agreement to the fullest extent permitted by law. Each part of this Agreement is intended to be severable. If any term, covenant, condition or provision hereof is in whole or in part unlawful, invalid or unenforceable for any reason whatsoever, then that term, covenant or condition shall, if possible, be deemed to have been modified in a manner that will make such provision lawful, valid and enforceable. If that is not possible, then that term, covenant or condition shall be deemed stricken and all remaining parts hereof shall be valid and enforceable and have full force and effect as if the invalid or unenforceable part had not been included.

15. Subject To. The Easements and covenants established herein shall be subject to all Easements, restrictions and conditions presently of record to the extent applicable to the Property or any portion thereof.

16. Joint Drafting. This Agreement shall be considered as having been drafted equally by counsel for each party.

17. Notices. Any notices required to be given by either party hereto to the other shall be given by certified mail, return receipt requested or by other overnight delivery service which provides a receipt upon delivery at the address provided for each in the introductory clause hereof.

[Signatures on following page(s)]

IN WITNESS WHEREOF, The District and The City have caused this Agreement to be executed as of the \_\_\_ day of \_\_\_\_\_, 2019.

THE CITY

CITY OF DEXTER,  
a Michigan municipal corporation

BY: \_\_\_\_\_

Its: City Mayor

STATE OF MICHIGAN                    )  
  ) ss.  
COUNTY OF WASHTENAW )

The foregoing instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2019 by \_\_\_\_\_, City Mayor of the City of Dexter, a Michigan municipal corporation, on behalf of the City.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Notary Public

Washtenaw County, Michigan  
My Commission Expires: \_\_\_\_\_

THE DISTRICT

DEXTER COMMUNITY SCHOOLS, a Michigan  
General Powers School District

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MICHIGAN                    )  
  ) ss.  
COUNTY OF WASHTENAW )

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2019 by \_\_\_\_\_, of the Dexter Community Schools, on behalf of the District.

\_\_\_\_\_

\_\_\_\_\_ Notary Public

Washtenaw County, Michigan  
My Commission Expires: \_\_\_\_\_

DRAFTED BY AND WHEN RECORDED  
RETURN TO:

Joseph M. Fazio, Esq.  
Miller Canfield Paddock and Stone PLC  
101 N. Main St., Suite 700  
Ann Arbor, MI 48104

**EXHIBIT A TO EASEMENT AGREEMENT**

LEGAL DESCRIPTION OF PROPERTY CONSISTING OF \_\_\_\_\_ ACRES  
(SERVIENT ESTATE)

**EXHIBIT A-1 TO EASEMENT AGREEMENT**

LEGAL DESCRIPTION OF PROPERTY BENEFITTED BY THE EASEMENT

**EXHIBIT B TO EASEMENT AGREEMENT**  
**EASEMENT AREA (DOMINANT ESTATE)**

| ~~33618128.5~~[33618128.6](#)02  
2912-00043